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FIREMAN'S FUND INSURANCE COMPANY,  
a foreign corporation a/s/o BASIC RESOURCES, INC.  
and GEORGE REED, INC., a foreign corporation

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

FIREMAN'S FUND INSURANCE  
COMPANY, a foreign corporation  
a/s/o BASIC RESOURCES, INC.  
and GEORGE REED, INC., a foreign  
corporation,

Plaintiff,

vs.

GERLING AMERICA INSURANCE  
COMPANY, a foreign corporation,

Defendant.

CASE NO. C 07 06302 CRB

**FFIC'S COMPENDIUM OF CASES,  
STATUTES, RULES, CODES AND OTHER  
COMMENTATORS CITED IN  
PLAINTIFF'S MOTION FOR FINAL  
SUMMARY JUDGMENT**

**CASES, STATUTES, RULES, CODES AND OTHER COMMENTATORS**

**CASES**

Action Auto Stores v. United Capital Insurance Co.  
845 F.Supp. 428, 442 (W.D. Mich. 1993)

Aerothrust Corporation v. Granada Insurance Company  
904 So.2d 470 (Fla. 3d DCA 2005)

American Equity Ins. Co. v. Don Van Ginhoven  
788 So.2d 388 (Fla. 5<sup>th</sup> DCA 2001)

American Family Mutual Insurance Co. v.  
American Girl, Inc., 673 NW 2d 65, 73 (Wis. 2004)

Assurance Company of America v. Lucas Waterproofing,  
2008 U.S. Dist. LEXIS 35802 (S.D. Fla. 2008)

Auto-Owners Ins. Co. v. Anderson, 756 So.2d 29, 34  
(Fla. 2000)

Broward Marine, Inc. v. Aetna Insurance Company  
459 So.2d 330 (Fla. 4<sup>th</sup> DCA 1984)

Burns v. Cal Fair Plan  
61 Cal. Rptr 3d 809, 816-17 (Cal. Ct. App. 2007)

1 Cessna Aircraft Company v. Avior F Technologies, Inc.  
2 33 FLWD 35  
(Fla. 3d DCA, Opinion Filed June 11, 2008)

3  
4 Cochran v. BJ Services Co., USA, 302 F.3d 499  
5 (5<sup>th</sup> Cir. 2002)

6  
7 Container Corp. of America v. Maryland Casualty Company  
8 707 So.2d 733, 736 (Fla. 1998)

9  
10 Cotton States Mutual Insurance Company v.  
11 Norell Heating & Air Conditioning Company, Inc.  
12 370 So.2d 270 (Ala. 1979)

13  
14 Dimmitt Chevrolet, Inc. v. SE. Fid. Ins. Corp.  
15 636 So.2d 700, 702 (Fla. 1993)

16  
17 Employers Insurance Company of Wausau v.  
18 National Union Fire Insurance Co., of Pittsburgh,  
19 Pennsylvania and Underwriters at Lloyds London  
20 2008 U.S. Dist. LEXIS 32312 (U.S.D.C. M.D. Fla. 2008)

21 Garcia v. Federal Ins. Co., 969 So.2d 288 (Fla. 2007)

22  
23 Gibbs M. Smith, Inc. v. United States Fidelity and  
24 Guarantee Co., 949 P.2d 337, 341 (Utah 1997)

25  
26  
27 Hamilton Die Cast, Inc. v. United States Fidelity &  
28 Guarantee Co., 508 F.2d 417, 419-420 (7 Cert. 1975)

1  
2  
3 Herrera v. C.A. Seguros Catatumbo  
4 844 So.2d 644 (Fla. 3d DCA 2003)

5  
6  
7 La Reunion Francaise, S.A. v. Christy,  
8 122 F.Supp. 2d, 1235 (M.D. Fla. 1999)

9  
10 Moransais v. Heathman, 744 So.2d 973 (Fla. 1999)

11  
12 Marlin v. Wetzel Co. Board of Education, 212 W.VA.  
13 215, 569 SE2d 462, 469 (W.VA. 2002)

14  
15 Maryland Casualty Co. v. Reeder  
16 270 Cal Rptr 719 (Cal. App. 4 Dist 1990)

17  
18 Minergy Neehan LLC v. Rotary Dryer Parts, Inc.  
19 2008 U.S. Dist. LEXIS 33814 U.S.D.C.  
20 (E.D. WI April 24, 2008)

21  
22 Musgrove v. Southland Corp., 898 F.2d 1041, 1044  
23 (5<sup>th</sup> Cir 1990)

24  
25 Nehme v. Smith Kline Beach and Clinical Laboratory  
26 863 So.2d 201, 205 (Fla. 2003)

27 Oak Ford Owners Association v. Auto Owners Insurance Co.  
28 510 F.Supp. 2d 812, 2007 U.S. Dist. LEXIS 14453

FFIC's COMPENDIUM OF CASES AND RULES CITED IN PLAINTIFF'S MOTION FOR COURT TO TAKE  
JUDICIAL NOTICE OF COURT RECORDS OF UNDERLYING STATE COURT ACTION

1 (U.S.D.C. M.D. Fla., February 28, 2007)

2  
3 Pacific Employers Insurance Company v.  
4 Alex Hofrichter, P.A., 670 So.2d 1023 (Fla. 3d DCA 1996)

5  
6  
7 Pensacola Executive House Condominium Association v.  
8 Baskerville-Donovan Engineers, Inc.  
9 566 So.2d 850, 851 (Fla. 1<sup>st</sup> DCA 1990)  
10 approved 581 So.2d 1301 (Fla. 1991)

11 RAD Source Tech, Inc. v. Colony National Insurance Company  
12 914 So.2d 1006 (Fla. 4<sup>th</sup> DCA 2005)

13  
14 Saint Paul Fire & Marine Insurance Company v.  
15 Lexington Insurance Company,  
16 2006 U.S. Dist. LEXIS 31397 (S.D. Fla., 2006)

17 Scottsdale Insurance Co., v. Deer Run Property  
18 Owners Association, 642 So.2d 786 (Fla. 4<sup>th</sup> DCA 1994)

19 State Farm Fire & Cas. Co. v. CTC Dev. Corp.  
20 720 So.2d 1072 (Fla. 1998)

21  
22 Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.  
23 913 So.2d 528, 532 (Fla. 2005)

24  
25 Thermo Terratech v. GDC Enviro Solutions, Inc.  
26 265 F.3d 329 (5<sup>th</sup> Cir. 2001)

27  
28 Travelers Indem. Co. of Am. v. Moore & Assocs., Inc.

FFIC's COMPENDIUM OF CASES AND RULES CITED IN PLAINTIFF'S MOTION FOR COURT TO TAKE  
JUDICIAL NOTICE OF COURT RECORDS OF UNDERLYING STATE COURT ACTION

1 216 S.W. 3d 302, 305 (Tenn. 2007)

2  
3 Tri-State Insurance Company of Minnesota v. Fitzgerald  
4 593 So.2d 1118 (Fla. 3d DCA 1992)

5  
6 Twin City Fire Insurance Co. v. Fireman's Fund  
7 Insurance Co., 386 F.2d 1272 (S.D. Fla. 2005)

8  
9 United Concrete Pipe Co. v. Bould, 437 So.2d 1061  
10 (Fla. 1983)

11  
12 US Fire Insurance Company v. J.S.U.B.  
13 979 So.2d 871 (Fla. 2007)

14  
15 Weedo v. Stone-E-Brick, Inc., 405 A.2d 788, 795  
16 (N.J. 1979)

17 **RULES**

18 Federal Rule of Civil Procedure 56

19  
20 Civil L.R. 7-1 through 7.5

21  
22  
23  
24 **STATUTES**

25 F.S. § 55.03

26  
27 F.S. § 768.79

1 F.S. § 95.11(4)

2  
3 **OTHER COMMENTATORS**

4 Appleman's 3d Ed § 1329 at P 148

5  
6 Anderson, Insurance Coverage Litigation  
7 Section 14.07 [a] at 14-117

8  
9 Black's Law Dictionary 1246 (8<sup>th</sup> Ed. 2004)

1  
2 DATED 3rd DAY OF July, 2008.

3  
4 By: /s/ Jon D. Derrevere  
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**PROOF OF SERVICE**

*Fireman's Fund Ins. Co. v. Gerling American Ins.*

United States District Court, Northern District of California

Case No.: C 07 06302 CRB

I am employed in the City and County of West Palm Beach, State of Florida. I am over the age of 18 and not a party to the within action; my business address is: Derrevere, Hawkes & Black, 470 Columbia Drive, Building "B", West Palm Beach, Florida 33409.

On July 3rd, 2008, I served the foregoing document(s) described as:

**FFIC'S COMPENDIUM OF CASES, STATUTES, RULES, CODES AND OTHER COMMENTATORS CITED IN PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT**

On the interested parties in this action by placing [ ] the original [X] a true copy thereof as stated below:

**[ ] BY REGULAR MAIL:**

I caused such envelopes to be deposited in the United States Mail at West Palm Beach, Florida with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service each day and that practice was followed in the ordinary course of business for the service herein attested to.

**[X] BY ECF:**

I HEREBY CERTIFY that on this 3rd day of July, 2008, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on: TINO X. DO, Barger & Wolen, LLP, 650 California Street, 9<sup>th</sup> Floor, San Francisco, CA 94108, tdo@barwol.com and CHARLES K. BRUNN, Brunn & Flynn, 928 12<sup>th</sup> Street, Suite 200, P.O. Box 3366, Modesto, CA 95354, CBrunn@Brunn-Flynn.com via transmission of Notices of Electronic Filing generated by CM/ECF.

**[X] FEDERAL** - I declare that I am employed in the office of a member of the Florida Bar, admitted to practice in all Florida Courts and who makes this Pro Hac Vice Application, that our co-counsel and sponsor is a member of the bar of this California Court and at their direction this service was made. Executed at West Palm Beach, Florida on this 3rd day of July, 2008.

NAME: *Deanna N. Menendez*

Signature:

*Deanna N. Menendez*